

**EDUCATION DEPARTMENT[281]**

**Adopted and Filed**

**Rule making related to private instruction**

The State Board of Education hereby amends Chapter 31, “Private Instruction and Dual Enrollment,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 256.7(5).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2021 Iowa Acts, Senate File 546.

*Purpose and Summary*

2021 Iowa Acts, Senate File 546, makes changes to Iowa Code chapter 299A, “Private Instruction.” This rule making incorporates the changes that are within the jurisdiction of the Department of Education and the State Board (certain changes are within the jurisdiction of the Iowa Department of Transportation). This rule making also removes obsolete references to Iowa Acts that have subsequently been codified, as well as making nonsubstantive wording changes regarding special education eligibility.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on June 30, 2021, as **ARC 5738C**. A public hearing was held on July 20, 2021, at 10:30 a.m. in Room B100, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa, with a videoconference option. No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the State Board on August 5, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on September 29, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **31.1(2)“a”** as follows:

*a. “Competent private instruction” means private either of the following:*

(1) Private instruction provided on a daily basis for at least 148 days during a school year, to be met by attendance for at least 37 days each school quarter, by or under the supervision of a licensed practitioner in the manner provided under Iowa Code section 299A.2 and this chapter, which results in the student about whom a report of private instruction has been filed making adequate progress.

(2) Private instruction provided by a parent, guardian, or legal custodian pursuant to Iowa Code section 299A.3.

ITEM 2. Amend paragraph **31.1(2)“b”** as follows:

*b. “Independent private instruction” means private instruction that meets the following criteria:*

(1) Is not accredited.

(2) Enrolls not more than four unrelated students.

(3) Does not charge tuition, fees, or other remuneration for instruction.

(4) Provides private or religious-based instruction as its primary purpose.

(5) Provides enrolled students with instruction in mathematics, reading and language arts, science, and social studies.

(6) Provides, upon written request from the superintendent of the school district in which the independent private instruction is provided, or from the director of the department of education, a report identifying the primary instructor, name and location of the authority responsible for the independent private instruction, and the names of the students enrolled.

(7) Is not a nonpublic school and does not provide competent private instruction as defined in Iowa Code section 299A.1 ~~as amended by 2013 Iowa Acts, House File 215, section 87, and these rules.~~

(8) Is exempt from all state statutes and administrative rules applicable to a school, a school board, or a school district, except as otherwise provided in Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454.~~

ITEM 3. Amend subrule 31.2(3) as follows:

**31.2(3) Reporting requirement option: private instruction exemption.** A parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person)~~ may meet, but is not required to meet, all of the following requirements:

*a.* Complete and send, in a timely manner, the report required under Iowa Code section 299.4 ~~as amended by 2013 Iowa Acts, House File 215, sections 84 to 86,~~ and this rule to the school district of residence of the child.

*b.* Ensure that the child under the parent’s, guardian’s, or legal or actual custodian’s instruction is evaluated annually to determine whether the child is making adequate progress, as defined in Iowa Code section 299A.6 and this chapter.

*c.* Ensure that the results of the child’s annual evaluation are reported to the school district of residence of the child and to the department of education by a date not later than ~~June 30 of each August 1 of the year following the school year~~ in which the child is under competent private instruction, pursuant to this chapter.

ITEM 4. Amend paragraph **31.3(3)“e”** as follows:

*e.* Referring to the child’s district of residence for evaluation a child who the practitioner has reason to believe may ~~be in~~ need of special education.

ITEM 5. Amend paragraph **31.4(3)“e”** as follows:

*e.* For purposes of assisting the district to meet its “child find” obligation under the Individuals with Disabilities Education Act, referring to the child’s district of residence for evaluation any child who the practitioner has reason to believe may be in need of special education.

ITEM 6. Amend paragraph **31.5(1)“d”** as follows:

*d.* The district shall annually report to the department of education by ~~June 30~~ August 1 of the year following the school year in which a child was under competent private instruction the names of all resident children who are subject to an annual assessment and who either failed to make adequate progress or whose parent, guardian, or legal or actual custodian failed to comply with the assessment requirements of the compulsory attendance law.

ITEM 7. Amend paragraph **31.5(1)“g”** as follows:

*g.* The district may request a parent, guardian, or legal or actual custodian of a child of compulsory attendance age providing competent private instruction to the child under Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, (private instruction by nonlicensed person) to provide the information required by this subrule; however, the parent, guardian, or legal or actual custodian is not required to do so, pursuant to Iowa Code section 299A.3 as amended by 2013 Iowa Acts, House File 215, section 88, and subrule 31.2(3).

ITEM 8. Amend paragraph **31.5(2)“c”** as follows:

*c.* The administration of the annual achievement evaluation shall not constitute a dual enrollment purpose under Iowa Code section 299A.8 as amended by 2013 Iowa Acts, House File 215, section 94, and this rule.

ITEM 9. Amend subrule 31.5(6) as follows:

**31.5(6) Driver education.** The public school district shall offer or make available to all resident students, including those receiving competent private instruction on an equal basis with students enrolled in the district, an approved course in driver education, as required by Iowa Code section 321.178(1)“c.” as amended by 2013 Iowa Acts, House File 215, section 99.

ITEM 10. Amend subrule **31.8(1)**, second unnumbered paragraph, as follows:

A child who is at least seven years old by September 15 and who begins a program of competent private instruction and is subject to the annual assessment requirement shall be administered a baseline evaluation for the purposes of obtaining educational data. The baseline evaluation and annual assessment shall be taken by May ~~4~~ 31.

ITEM 11. Adopt the following new paragraph **31.8(2)“e”**:

*e.* This rule shall not be construed to require or prohibit testing on any subject matter at intervals more frequently or at grade levels other than those set forth in Iowa Code section 256.7(21)“b”(2).

ITEM 12. Amend subrule 31.8(3), introductory paragraph, as follows:

**31.8(3) Portfolio assessment or evaluation.** A parent, guardian, or legal or actual custodian of a child subject to the annual assessment requirement may arrange to have an appropriately licensed Iowa practitioner review a portfolio of evidence of the child’s progress annually by May ~~4~~ 31, subject to the following requirements:

ITEM 13. Amend subrule 31.9(2) as follows:

**31.9(2) Standardized tests.** The results of a standardized test taken by a child subject to the annual assessment requirements shall be reported by the child’s parent, guardian, or legal or actual custodian to the district of residence of the child by ~~June 30~~ August 1 of the year following the school year in which the test was taken. The results shall be submitted either in original form or as a true and correct photocopy of the original form as received from the agency responsible for scoring the test, from which any test results not required under law may be redacted.

ITEM 14. Amend subrule 31.9(3), introductory paragraph, as follows:

**31.9(3) Portfolio assessments.** The results of an assessment of a child’s educational portfolio made by a qualified Iowa licensed practitioner shall be submitted by the portfolio evaluator to the child’s parent,

guardian, or legal or actual custodian, who shall send a copy to the district of residence of the child by ~~June 30~~ August 1 of the year following the school year in which the assessment was done.

ITEM 15. Amend subrule 31.9(4) as follows:

**31.9(4)** *Report card from accredited correspondence school.* Report cards from an accredited correspondence school shall be submitted by the child's parent, guardian, or legal or actual custodian to the child's district of residence by ~~June 30~~ August 1 of the year following the school year in which the report cards were issued by the accredited correspondence school.

ITEM 16. Amend subparagraph **31.11(2)"a"(1)** as follows:

(1) The public school district shall offer or make available to all resident students receiving independent private instruction an approved course in driver education on an equal basis with students enrolled in the district, as required by Iowa Code section 321.178(1) "c." ~~as amended by 2013 Iowa Acts, House File 215, section 99.~~

ITEM 17. Amend subrule 31.12(1) as follows:

**31.12(1)** *Confidentiality of records.* Records maintained by school districts or area education agencies under Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454,~~ and this chapter shall be protected under Iowa Code chapter 22, as well as 20 U.S.C. Section 1232g and 34 CFR Part 99. Personally identifiable information about students, as defined in 34 CFR Part 99, shall be disclosed only as permitted by that Part.

ITEM 18. Amend subrule 31.12(2), introductory paragraph, as follows:

**31.12(2)** *Compulsory attendance actions.* In taking any action under Iowa Code chapters 299 and 299A ~~as amended by 2013 Iowa Acts, House Files 215 and 454,~~ a school district shall consider the requirements of compulsory attendance to be satisfied in the following instances:

ITEM 19. Amend paragraph **31.12(2)"d"** as follows:

*d.* The child is receiving private instruction under subrule 31.2(3) and Iowa Code section 299A.3 ~~as amended by 2013 Iowa Acts, House File 215, section 88,~~ unless the subrule and section do not apply.

ITEM 20. Amend ~~281—~~**Chapter 31**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 299 and 299A as amended by ~~2013~~ 2021 Iowa Acts, ~~House Files 215 and 454~~ Senate File 546.

[Filed 8/5/21, effective 9/29/21]

[Published 8/25/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/25/21.